

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 241

97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, March 7, 2013, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0957S.04C

AN ACT

To amend chapter 67, RSMo, by adding thereto eight new sections relating to broadband.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 67, RSMo, is amended by adding thereto eight new sections, to be known as sections 67.5060, 67.5062, 67.5064, 67.5066, 67.5068, 67.5070, 67.5072, and 67.5074, to read as follows:

67.5060. Sections 67.5060 to 67.5074 shall be known and may be cited as the "Uniform Wireless Communications Infrastructure Deployment Act" and is intended to encourage and streamline the deployment of broadband facilities and to help ensure that robust wireless communication services are available throughout Missouri.

67.5062. As used in sections 67.5060 to 67.5074, the following terms shall mean:

(1) "Accessory equipment", any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures;

(2) "Antenna", communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services;

(3) "Applicant", any person engaged in the business of providing wireless communications services or the wireless communications infrastructure required for wireless communications services who submits an application;

(4) "Application", a request submitted by an applicant to an

16 authority to construct a new wireless support structure, for the
17 substantial modification of a wireless support structure, or for
18 collocation of wireless facilities on an existing structure;

19 (5) "Authority", each state, county, and municipal governing
20 body, board, agency, office, or commission authorized by law to make
21 legislative, quasi-judicial, or administrative decisions relative to the
22 construction, installation, modification, or siting of wireless facilities
23 and wireless support structures. The term shall not include state
24 courts having jurisdiction over land use, planning, or zoning decisions
25 made by an authority;

26 (6) "Base station", a station at a specific site authorized to
27 communicate with mobile stations, generally consisting of radio
28 transceivers, antennas, coaxial cables, power supplies, and other
29 associated electronics;

30 (7) "Building permit", a permit issued by an authority prior to the
31 collocation of wireless facilities on an existing structure, the
32 substantial modification of a wireless support structure or the
33 commencement of construction of any new wireless support structure,
34 solely to ensure that the work to be performed by the applicant
35 satisfies the applicable building code;

36 (8) "Collocation", the placement or installation of wireless
37 facilities on existing structures, including electrical transmission
38 towers, water towers, buildings, and other structures capable of
39 structurally supporting the attachment of wireless facilities in
40 compliance with applicable codes. The term includes the placement,
41 replacement, or modification of wireless facilities within a previously
42 approved equipment compound;

43 (9) "Electrical transmission tower", an electrical transmission
44 structure used to support high voltage overhead power lines. The term
45 shall not include any utility pole;

46 (10) "Equipment compound", an area surrounding or near the
47 base of a wireless support structure within which is located wireless
48 facilities;

49 (11) "Existing structure", a structure that exists at the time a
50 request for permission to place wireless facilities on a structure is filed
51 with an authority. The term includes any structure that is capable of
52 supporting the attachment of wireless facilities in compliance with

53 applicable codes, including, but not limited to, towers, buildings, and
54 water towers. The term shall not include any utility pole;

55 (12) "Substantial modification", the mounting of a proposed
56 wireless facility on a wireless support structure which:

57 (a) Increases the existing vertical height of the structure by
58 more than ten percent or the height of one additional antenna array
59 with separation from the nearest existing antenna not to exceed twenty
60 feet, whichever is greater; or

61 (b) Involves adding an appurtenance to the body of a wireless
62 support structure that protrudes horizontally from the edge of the
63 wireless support structure more than twenty feet, or more than the
64 width of the wireless support structure at the level of the
65 appurtenance, whichever is greater (except where necessary to shelter
66 the antenna from inclement weather or to connect the antenna to the
67 tower via cable); or

68 (c) Increases the square footage of the existing equipment
69 compound by more than two thousand five hundred square feet;

70 (13) "Utility pole", a structure owned or operated by a public
71 utility, municipality, electric membership corporation, or rural electric
72 cooperative that is designed specifically for and used to carry lines,
73 cables, or wires for telephony, cable television, or electricity or to
74 provide lighting;

75 (14) "Water tower", a water storage tank, or a standpipe or an
76 elevated tank situated on a support structure, originally constructed
77 for use as a reservoir or facility to store or deliver water;

78 (15) "Wireless facility", the set of equipment and network
79 components, exclusive of the underlying wireless support structure,
80 including, but not limited to, antennas, accessory equipment,
81 transmitters, receivers, base stations, power supplies, cabling, and
82 associated equipment necessary to provide wireless communications
83 services;

84 (16) "Wireless support structure", a freestanding structure, such
85 as a monopole or tower, designed to support wireless facilities. This
86 term does not include utility poles.

67.5064. In order to ensure uniformity across the state of
2 Missouri with respect to the consideration of every application, an
3 authority shall not:

4 **(1) Require an applicant to submit information about, or**
5 **evaluate an applicant's business decisions with respect to, its designed**
6 **service, customer demand for service, or quality of its service to or**
7 **from a particular area or site;**

8 **(2) Evaluate an application based on the availability of other**
9 **potential locations for the placement of wireless support structures or**
10 **wireless facilities, including without limitation the option to collocate**
11 **instead of constructing a new wireless support structure or for**
12 **substantial modifications of a support structure, or vice versa;**

13 **(3) Dictate the type of wireless facilities, infrastructure, or**
14 **technology to be used by the applicant or require an applicant to**
15 **construct a distributed antenna system in lieu of constructing a new**
16 **wireless support structure, a substantial modification of a wireless**
17 **support structure, or collocation;**

18 **(4) Require the removal of existing wireless support structures**
19 **or wireless facilities, wherever located, as a condition to approval of an**
20 **application;**

21 **(5) Impose environmental testing, sampling, or monitoring**
22 **requirements or other compliance measures for radio frequency**
23 **emissions on wireless facilities that are categorically excluded under**
24 **the Federal Communication Commission's rules for radio frequency**
25 **emissions pursuant to 47 CFR 1.1307(b)(1);**

26 **(6) Establish or enforce regulations or procedures for RF signal**
27 **strength or the adequacy of service quality;**

28 **(7) In conformance with 47 U.S.C. Section 332(c)(7)(B)(iv), reject**
29 **an application, in whole or in part, based on perceived or alleged**
30 **environmental effects of radio frequency emissions;**

31 **(8) Impose any restrictions with respect to objects in navigable**
32 **airspace that are greater than or in conflict with the restrictions**
33 **imposed by the Federal Aviation Administration;**

34 **(9) Prohibit the placement of emergency power systems that**
35 **comply with federal and state environmental requirements;**

36 **(10) Charge an application fee, consulting fee, or other fee**
37 **associated with the submission, review, processing, and approval of an**
38 **application that is not required for similar types of commercial**
39 **development within the authority's jurisdiction. Fees imposed by an**
40 **authority or by a third-party entity providing review or technical**

41 consultation to the authority must be based on actual, direct, and
42 reasonable administrative costs incurred for the review, processing,
43 and approval of an application. In no case should total charges and
44 fees exceed five hundred dollars for a collocation application or one
45 thousand five hundred dollars for an application for a new wireless
46 support structure or for a substantial modification of a wireless
47 support structure. Notwithstanding the foregoing:

48 (a) In no event shall an authority or any third-party entity
49 include within its charges any travel expenses incurred in a third-
50 party's review of an application; and

51 (b) In no event will an applicant be required to pay or reimburse
52 an authority for consultant or other third-party fees based on a
53 contingency or result-based arrangement;

54 (11) Impose surety requirements, including bonds, escrow
55 deposits, letters of credit, or any other type of financial surety, to
56 ensure that abandoned or unused facilities can be removed unless the
57 authority imposes similar requirements on other permits for other
58 types of commercial development or land uses. If surety requirements
59 are imposed, they must be competitively neutral, nondiscriminatory,
60 reasonable in amount, and commensurate with the historical record for
61 local facilities and structures that are abandoned;

62 (12) Condition the approval of an application on the applicant's
63 agreement to provide space on or near the wireless support structure
64 for authority or local governmental services at less than the market
65 rate for space or to provide other services via the structure or facilities
66 at less than the market rate for such services;

67 (13) Limit the duration of the approval of an application;

68 (14) Discriminate on the basis of the ownership, including by the
69 authority, of any property, structure, or tower when promulgating rules
70 or procedures for siting wireless facilities or for evaluating
71 applications;

72 (15) Impose any requirements or obligations regarding the
73 presentation or appearance of facilities, including but not limited to
74 those relating to the kind or type of materials used and those relating
75 to arranging, screening, or landscaping of facilities;

76 (16) Impose any requirements that an applicant purchase,
77 subscribe to, use, or employ facilities, network, or services owned,

78 provided, or operated by, whether in whole or in part, an authority or
79 by any entity in which an authority has a governance, competitive,
80 economic, financial, or other interest;

81 (17) Condition the approval of an application on, or otherwise
82 require, the applicant's agreement to indemnify or insure the authority
83 for or in connection with the authority's exercise of its police power-
84 based regulations; or

85 (18) Condition the approval of an application on, or otherwise
86 require, the applicant's agreement to permit the authority to place at
87 or co-locate with the applicant's wireless support structure any
88 wireless facilities provided or operated by, whether in whole or in part,
89 an authority or by any entity in which an authority has a governance,
90 competitive, economic, financial, or other interest.

67.5066. 1. Authorities may continue to exercise zoning, land use,
2 planning, and permitting authority within their territorial boundaries
3 with regard to the siting of new wireless support structures, subject to
4 the provisions of sections 67.5060 to 67.5074, including without
5 limitation section 67.5064, and subject to federal law.

6 2. Any applicant that proposes to construct a new wireless
7 support structure within the jurisdiction of any authority, planning or
8 otherwise, that has adopted planning and zoning regulations in
9 accordance with sections 67.5060 to 67.5074 shall:

10 (1) Submit the necessary copies and attachments of the
11 application to the appropriate authority; and

12 (2) Comply with applicable local ordinances concerning land use
13 and the appropriate permitting processes.

14 3. Disclosure of records in the possession or custody of authority
15 personnel, including but not limited to documents and electronic data,
16 shall be subject to chapter 610.

17 4. The authority, within one hundred fifty calendar days of
18 receiving an application to construct a new wireless support structure,
19 shall:

20 (1) Review the application in light of its conformity with
21 applicable local zoning regulations. An application is deemed to be
22 complete unless the authority notifies the applicant in writing, within
23 thirty calendar days of submission of the application, of the specific
24 deficiencies in the application which, if cured, would make the

25 application complete. Upon receipt of a timely written notice that an
26 application is deficient, an applicant may take thirty calendar days
27 from receiving such notice to cure the specific deficiencies. If the
28 applicant cures the deficiencies within thirty calendar days, the
29 application shall be reviewed and processed within one hundred fifty
30 calendar days from the initial date the application was received. If the
31 applicant requires a period of time beyond thirty calendar days to cure
32 the specific deficiencies, the one hundred fifty calendar days deadline
33 for review shall be extended by the same period of time;

34 (2) Make its final decision to approve or disapprove the
35 application; and

36 (3) Advise the applicant in writing of its final decision.

37 5. If the authority fails to act on an application to construct a
38 new wireless support structure within the one hundred fifty calendar
39 days review period specified under subsection 4 of this section, the
40 application shall be deemed approved.

41 6. A party aggrieved by the final action of an authority, either by
42 its affirmatively denying an application under the provisions of this
43 section or by its inaction, may bring an action for review in any court
44 of competent jurisdiction. In any such action, the party filing such
45 action, if it should substantially prevail in the action, shall be
46 permitted to recover its reasonable costs and attorney's fees in
47 bringing the action.

67.5068. 1. Authorities may continue to exercise zoning, land use,
2 planning, and permitting authority within their territorial boundaries
3 with regard to applications for substantial modifications of wireless
4 support structures, subject to the provisions of sections 67.5060 to
5 67.5074, including without limitation section 67.5064, and subject to
6 federal law.

7 2. Any applicant that applies for a substantial modification of a
8 wireless support structure within the jurisdiction of any authority,
9 planning, or otherwise, that has adopted planning and zoning
10 regulations in accordance with sections 67.5060 to 67.5074 shall:

11 (1) Submit the necessary copies and attachments of the
12 application to the appropriate authority; and

13 (2) Comply with applicable local ordinances concerning land use
14 and the appropriate permitting processes.

15 **3. Disclosure of records in the possession or custody of authority**
16 **personnel, including but not limited to documents and electronic data,**
17 **shall be subject to chapter 610.**

18 **4. The authority, within ninety calendar days of receiving an**
19 **application for a substantial modification of wireless support**
20 **structures, shall:**

21 **(1) Review the application in light of its conformity with**
22 **applicable local zoning regulations. An application is deemed to be**
23 **complete unless the authority notifies the applicant in writing, within**
24 **thirty calendar days of submission of the application, of the specific**
25 **deficiencies in the application which, if cured, would make the**
26 **application complete. Upon receipt of a timely written notice that an**
27 **application is deficient, an applicant may take thirty calendar days**
28 **from receiving such notice to cure the specific deficiencies. If the**
29 **applicant cures the deficiencies within thirty calendar days, the**
30 **application shall be reviewed and processed within ninety calendar**
31 **days from the initial date the application was received. If the applicant**
32 **requires a period of time beyond thirty calendar days to cure the**
33 **specific deficiencies, the ninety calendar days deadline for review shall**
34 **be extended by the same period of time;**

35 **(2) Make its final decision to approve or disapprove the**
36 **application; and**

37 **(3) Advise the applicant in writing of its final decision.**

38 **5. If the authority fails to act on an application for a substantial**
39 **modification within the ninety calendar days review period specified**
40 **under subsection 4 of this section, the application for a substantial**
41 **modification shall be deemed approved.**

42 **6. A party aggrieved by the final action of an authority, either by**
43 **its affirmatively denying an application under the provisions of this**
44 **section or by its inaction, may bring an action for review in any court**
45 **of competent jurisdiction. In any such action, the party filing such**
46 **action, if it should substantially prevail in the action, shall be**
47 **permitted to recover its reasonable costs and attorney's fees in**
48 **bringing the action.**

67.5070. 1. Subject to the provisions of sections 67.5060 to
2 **67.5074, including without limitation section 67.5064, collocation**
3 **applications shall be reviewed for conformance with applicable**

4 building permit requirements but shall not otherwise be subject to
5 zoning or land use requirements, including design or placement
6 requirements, or public hearing review.

7 2. The authority, within forty-five calendar days of receiving a
8 collocation application, shall:

9 (1) Review the collocation application in light of its conformity
10 with applicable building permit requirements and consistency with
11 sections 67.5060 to 67.5074. A collocation application is deemed to be
12 complete unless the authority notifies the applicant in writing, within
13 fifteen calendar days of submission of the collocation application, of
14 the specific deficiencies in the collocation application which, if cured,
15 would make the collocation application complete. Upon receipt of a
16 timely written notice that a collocation application is deficient, an
17 applicant may take fifteen calendar days from receiving such notice to
18 cure the specific deficiencies. If the applicant cures the deficiencies
19 within fifteen calendar days, the collocation application shall be
20 reviewed and processed within forty-five calendar days from the initial
21 date the collocation application was received. If the applicant requires
22 a period of time beyond fifteen calendar days to cure the specific
23 deficiencies, the forty-five calendar days deadline for review shall be
24 extended by the same period of time;

25 (2) Make its final decision to approve or disapprove the
26 collocation application; and

27 (3) Advise the applicant in writing of its final decision.

28 3. If the authority fails to act on a collocation application within
29 the forty-five calendar days review period specified in subsection 2 of
30 this section, the collocation application shall be deemed approved.

31 4. Notwithstanding anything to the contrary in sections 67.5060
32 to 67.5074, an authority may not mandate, require, or regulate the
33 installation, location, or use of wireless facilities on utility poles.

34 5. A party aggrieved by the final action of an authority, either by
35 its affirmatively denying an application under the provisions of this
36 section or by its inaction, may bring an action for review in any court
37 of competent jurisdiction. In any such action, the party filing such
38 action, if it should substantially prevail in the action, shall be
39 permitted to recover its reasonable costs and attorney's fees in
40 bringing the action.

67.5072. In accordance with the policies of this state to further
2 the deployment of wireless communications infrastructure:

3 (1) An authority may not institute any moratorium on the
4 permitting, construction, or issuance of approval of new wireless
5 support structures, substantial modifications of wireless support
6 structures or collocations;

7 (2) To encourage applicants to request construction of new
8 wireless support structures on public lands and to increase local
9 revenues, authorities shall offer leases and/or contracts for applicants
10 to use public lands that are at least twenty-five years in duration, and
11 at market rates. If the applicant and the authority do not agree on the
12 applicable market rate for any such public land, and, further, cannot
13 agree on a process by which to derive the applicable market rate for
14 any such public land, then, in that circumstance, the market rate will
15 be determined by a panel of three appraisers, using the following
16 process. Each party will appoint one appraiser to the panel, and the
17 two appraisers so appointed will appoint a third appraiser. Each
18 appraiser will independently appraise the appropriate lease rate, and
19 the market rate shall be set at the mid-point between the highest and
20 lowest market rates among all three independent appraisals; provided,
21 however, that if the mid-point between the highest and lowest
22 appraisals is greater than or less than ten percent of the appraisal of
23 the third appraiser chosen by the parties' appointed appraisers, then
24 the third appraisal will determine the rate for the lease. The appraisal
25 process shall be concluded within one hundred fifty calendar days from
26 the date the applicant first tenders its proposed lease rate to the
27 authority. Each party will bear the cost of its own appointed appraiser,
28 and the parties shall share equally the cost of the third appraiser
29 chosen by the two appointed appraisers.

67.5074. If any provision of sections 67.5060 to 67.5074, or the
2 application thereof, to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applications of sections
4 67.5060 to 67.5074 which can be given effect without the invalid
5 provision or application, and to that end, the provisions of sections
6 67.5060 to 67.5074 are declared to be severable.

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